

Title 18-B: TRUSTS
Chapter 1: GENERAL PROVISIONS AND DEFINITIONS

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Maine Revised Statutes
Title 18-B: TRUSTS
Chapter 1: GENERAL PROVISIONS AND DEFINITIONS

§101. SHORT TITLE

This Part may be known and cited as "the Maine Uniform Trust Code." [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§102. SCOPE

This Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§103. DEFINITIONS

As used in this Code, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

1. Action. "Action," with respect to an act of a trustee, includes a failure to act.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

1-A. Ascertainable standard. "Ascertainable standard" means an ascertainable standard relating to an individual's health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the federal Internal Revenue Code of 1986, as in effect on July 1, 2005.

[2005, c. 184, §2 (NEW) .]

2. Beneficiary. "Beneficiary" means a person that:

A. Has a present or future beneficial interest in a trust, vested or contingent; or [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

B. In a capacity other than that of trustee, holds a power of appointment over trust property. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

3. Charitable trust. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 405, subsection 1.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

3-A. Code. "Code" means the Maine Uniform Trust Code.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

4. Conservator. "Conservator" means a person appointed by the court to administer an estate of a minor or adult individual.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

4-A. Current beneficiary. "Current beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

[2011, c. 42, §1 (NEW) .]

5. Environmental law. "Environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

6. Guardian. "Guardian" means a person who has qualified pursuant to court appointment to make decisions regarding the support, care, education, health and welfare of a minor or adult individual. The term does not include a guardian ad litem.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

7. Interests of beneficiaries. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

8. Jurisdiction. "Jurisdiction," with respect to a geographic area, includes a state or country.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

9. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

10. Power of withdrawal. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee that is limited by an ascertainable standard, or exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

[2005, c. 184, §3 (AMD) .]

11. Property. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

12. Qualified beneficiary. "Qualified beneficiary" means a living beneficiary who on the date the beneficiary's qualification is determined:

A. Is a distributee or permissible distributee of trust income or principal; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

B. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph A terminated on that date, but the termination of those interests would not cause the trust to terminate; or [2005, c. 184, §4 (AMD) .]

C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

"Qualified beneficiary" does not include a contingent distributee or a contingent permissible distributee of trust income or principal whose interest in the trust is not reasonably expected to vest.

[2005, c. 184, §4 (AMD) .]

13. Revocable. "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

14. Settlor. "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

15. Spendthrift provision. "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

16. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

17. Terms of trust. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

18. Trust instrument. "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments to the instrument.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

19. Trustee. "Trustee" includes an original, additional and successor trustee, and a cotrustee, whether or not appointed or confirmed by a court.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF). 2005, c. 184, §§2-4 (AMD). 2011, c. 42, §1 (AMD).

§104. KNOWLEDGE

1. Person. Subject to subsection 2, a person has knowledge of a fact if the person:

A. Has actual knowledge of it; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

B. Has received a notice or notification of it; or [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

C. From all the facts and circumstances known to the person at the time in question, has reason to know it. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Organization. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§105. DEFAULT AND MANDATORY RULES

1. Code governs. Except as otherwise provided in the terms of the trust, this Code governs the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Terms prevail; exceptions. The terms of a trust prevail over any provision of this Code except:

A. The requirements for creating a trust; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

B. The duty of a trustee to act in good faith and in accordance with the purposes of the trust; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

C. The requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

D. The power of the court to modify or terminate a trust under sections 410 to 416; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

E. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in chapter 5; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

F. The power of the court under section 702 to require, dispense with, modify or terminate a bond; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

G. The power of the court under section 708, subsection 2 to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

H. Subject to subsection 3, the duty under section 813, subsection 2, paragraphs B and C to notify current beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee and of their right to request trustee's reports; [2011, c. 42, §2 (AMD).]

I. Subject to subsection 3, the duty under section 813, subsection 1 to respond to the request of a current beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust; [2011, c. 42, §3 (AMD).]

J. The effect of an exculpatory term under section 1008; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

K. The rights under sections 1010 to 1013 of a person other than a trustee or beneficiary; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

L. Periods of limitation for commencing a judicial proceeding; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

M. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

N. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 203 and 204. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

[2011, c. 42, §§2, 3 (AMD).]

3. Waiver or modification. The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 813, subsection 1 or 2 to give notice, information and reports to qualified beneficiaries in either or both of the following ways:

A. Waiving or modifying such duties as to all qualified beneficiaries except the settlor's surviving spouse during the lifetime of the settlor or the lifetime of the settlor's surviving spouse; and [2005, c. 184, §6 (NEW).]

B. With respect to one or more of the current beneficiaries as to whom the settlor has waived or modified such duties, designating a person or persons, any of whom may or may not be a beneficiary, to act in good faith to protect the interests of the current beneficiaries who are not receiving notice, information or reports and to receive any notice, information or reports required under section 813, subsection 1 or 2 in lieu of providing such notice, information or reports to the current beneficiaries. The person or persons designated under this paragraph are deemed to be representatives of the current beneficiaries not receiving notice, information or reports for the purposes of the time limitation for a beneficiary to commence an action against the trustee for breach of trust as provided in section 1005, subsection 1. [2011, c. 42, §4 (AMD).]

[2011, c. 42, §4 (AMD).]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF). 2005, c. 184, §§5,6 (AMD). 2005, c. 683, §C7 (AMD). 2011, c. 42, §§2-4 (AMD).

§106. COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

The common law of trusts and principles of equity supplement this Code, except to the extent modified by this Code or another statute of this State. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§107. GOVERNING LAW

The meaning and effect of the terms of a trust are determined by: [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

1. Law of jurisdiction designated; exception. The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Law of jurisdiction with most significant relationship. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§108. PRINCIPAL PLACE OF ADMINISTRATION

1. Terms of trust controlling. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

A. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

B. All or part of the administration occurs in the designated jurisdiction. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Duty of trustee. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration and the interests of the beneficiaries.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

3. Transfer of place of administration. Without precluding the right of the court to order, approve or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection 2, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

4. Notice of transfer of place of administration. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

A. The name of the jurisdiction to which the principal place of administration is to be transferred; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

B. The address and telephone number at the new location at which the trustee can be contacted; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

C. An explanation of the reasons for the proposed transfer; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

D. The date on which the proposed transfer is anticipated to occur; and [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

E. The date, which may not be less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

5. Objection to transfer. The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

6. Transfer property to successor trustee. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 704.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§109. METHODS AND WAIVER OF NOTICE

1. Manner. Notice to a person under this Code or the sending of a document to a person under this Code must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business or a properly directed electronic message.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Notice not required. Notice otherwise required under this Code or a document otherwise required to be sent under this Code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

3. Waiver. Notice under this Code or the sending of a document under this Code may be waived by the person to be notified or sent the document.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

4. Notice of judicial proceeding. Notice of a judicial proceeding must be given as provided in the applicable Maine Rules of Civil Procedure.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§110. OTHERS TREATED AS QUALIFIED BENEFICIARIES

1. Charitable organization or person to enforce trust. A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this Code if the charitable organization, on the date the charitable organization's qualification is being determined:

A. Is a distributee or permissible distributee of trust income or principal; [2005, c. 184, §7 (NEW) .]

B. Would be a distributee or a permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or [2005, c. 184, §7 (NEW) .]

C. Would be a distributee or permissible distributee of trust income or principal on that date. [2005, c. 184, §7 (NEW) .]

A charitable organization whose interest in the trust as a contingent distributee of the trust income or principal is not reasonably expected to vest does not have the rights of a qualified beneficiary.

[2005, c. 184, §7 (AMD) .]

1-A. Person appointed to enforce trust. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 408 or 409 has the rights of a qualified beneficiary under this Code.

[2005, c. 184, §7 (NEW) .]

2. Attorney General. The Attorney General has the rights provided in Title 5, section 194 with respect to a charitable trust having its principal place of administration in this State, but may not be treated as and does not have the rights of a qualified beneficiary.

[2005, c. 184, §7 (AMD) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF). 2005, c. 184, §7 (AMD).

§111. NONJUDICIAL SETTLEMENT AGREEMENTS

1. Interested persons defined. For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

2. Binding nonjudicial settlement agreement. Except as otherwise provided in subsection 3, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

3. Validity of nonjudicial settlement agreement. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this Code or other applicable law.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

4. Matters of nonjudicial settlement agreement. Matters that may be resolved by a nonjudicial settlement agreement include:

A. The interpretation or construction of the terms of the trust; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

B. The approval of a trustee's report or accounting; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

C. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

D. The resignation or appointment of a trustee and the determination of a trustee's compensation; [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

E. Transfer of a trust's principal place of administration; and [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

F. Liability of a trustee for an action relating to the trust. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

5. Court approval. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in chapter 3 was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

[2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF) .]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

§112. RULES OF CONSTRUCTION

The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

2003, c. 618, §A1 (NEW). 2003, c. 618, §A2 (AFF).

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